



(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 399 OF 1997 Division Bench (Criminal)

APPELLANT:
(IN JAIL)

Raju alias Rajkumar S/o Ameerchand Rajput,
aged about 22 years, resident of village
Dineshpur, Police Station- Gadarpur,
Tahsil - Bajpur, Distt. Nainital, (U.P.)

VERSUS

RESPONDENT:

State of Madhya Pradesh.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL
PROCEDURE, 1973

2527

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 399 OF 1997

Raju @ Rajkumar

Vs.

State of M.P.

JUDGEMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI L.C.BHADOO ,J.

Peeru

Sd/-
L.C.BHADOO
Judge

POST FOR JUDGMENT ON 20th FEBRUARY 2006

Sd/-
Dhirendra Mishra
Judge

**DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ**

CRIMINAL APPEAL NO. 399 of 1997

Appellant : Raju @ Rajkumar

Vs.

Respondent : State of Madhya Pradesh

Shri R.K.Jain, learned counsel for the appellant.

Shri U.N.S.Deo, learned Govt. Advocate with Shri M.P.S.Bhatia,
learned Panel Lawyer for the respondent/State.

JUDGMENT
(20.02.2006)

Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 05.12.1996 passed by the learned Additional Sessions Judge, Baloda Bazar, Distt- Raipur in S.T.No.107/96 whereby learned Additional Sessions Judge has convicted the accused/appellant under Sections 302, 363, 366 and 376 of the Indian Penal Code and sentenced him to undergo life imprisonment with fine of Rs.5,000/-, in default R.I. for one year under Section 302 of the IPC, R.I. for seven years with fine of Rs.1,000/-, in default one year R.I. for the offences under Sections 363 & 366 of the IPC and R.I. for ten years with fine of Rs.1,000/-, in default R.I. for one year under Section 376 of the IPC.

2. The case of the prosecution, in brief, is that complainant Meena Kumari lodged a report in Police Station-Baloda Bazar on 05.12.1995 at about 7.30 a.m. informing that on 04.12.1995 at about 8.00 p.m. appellant came in his truck, parked the same inside the factory and came to her hotel, took tea and *bhajia* and also offered *bhajia* to her daughter (since deceased) aged about five years and thereafter enticed her and took her on his back and went somewhere. When he did not return she sent her son Suman to search them, however, he could also not spot them. After some time the appellant came

alone and enquired about his fish. On being asked about her daughter, he said that he had left his daughter there only whereupon she was frightened and narrated the incident to Sarpanch-Bhojram and Panch-Baburam. They also enquired from the appellant and searched in the vicinity. Raju ran away and entered in the cement plant. He was further brought from the plant and asked. However, the appellant ran away on the pretext of easing himself. Baburam and Bhuwan went by truck to catch him and he was caught near Arjuni and brought back. Thereafter the complainant in the company of other villagers and appellant went to the police station and lodged the report. After registering the offence the police went to the scene of occurrence, recorded memorandum (Ex.P/5) of the appellant, discovered the dead body of Shakuntala and prepared Panchanama (Ex.P/4) after giving notice to the witnesses vide Ex.P/3. Dehati merg intimation of Ex.P/13 was recorded on 05.12.1995 at about 9.30 a.m. after discovery of the dead body. On the basis of memorandum of the appellant, merg intimation of Ex.P/14 was recorded at about 8.10 p.m. The dead body was sent for postmortem to Govt. Hospital, Baloda Bazar vide Ex.P/9 where Dr.R.S.Tiwari (P.W.12) and Dr. Joshi (P.W.13) conducted postmortem over the dead body and submitted the report of Ex.P/17. During investigation salwar of the deceased was seized vide Ex.P/2 and underwear of the appellant was seized vide Ex.P/6. Kurti and underwear of the deceased in a sealed packet sent by the doctor were seized vide Ex.P/7. Spot map was got prepared by Halka Patwari vide Ex.P/8. The accused was medically examined and report of the doctor is Ex.P/18. The appellant was arrested vide arrest memo of Ex.P/15 on 05.12.1995 at about 20.15 hours. The seized articles i.e. clothing of the appellant and the deceased were sent for chemical examination to Forensic Science Laboratory vide Ex.P/16. After completion of the investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazar who in turn committed the case to the Court of Sessions Judge, Raipur and the same was received on transfer by the learned Additional Sessions Judge for trial.

3. Learned Additional Sessions Judge framed charges under Sections 363, 366-A, 376 and 302 of the Indian Penal Code. The appellant denied the charges and prayed for trial. During trial the prosecution examined in all 13

witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution. The accused examined three defence witnesses in his defence. After hearing the arguments on behalf of the Additional Public Prosecutor and the counsel for the accused, learned trial Court held the accused/appellant guilty for commission of the above offences and sentenced him as described above.

4. The questions to be decided in this appeal are as follows:

(i) Whether the death of deceased Shakuntala was homicidal in nature?

(ii) Whether the appellant after kidnapping the deceased, aged about five years, from the lawful custody of her guardians subjected her to rape and murdered her thereafter?

5. Admittedly there is no eyewitness to the incident and the case of the prosecution rests on circumstantial evidence. The first question is - whether from the evidence available on record homicidal death of deceased Shakuntala is established or not?

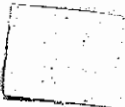
6. The dead body of deceased Shakuntala is alleged to have been found on the basis of memorandum (Ex.P/5) of the appellant on 05.12.1995 at about 9.00 a.m. from a small pit. As per inquest report the dead body was found lying face down in a pit where depth of water was only 6 inch on the eastern side of the canal. Eyes of the deceased were found closed, mouth semi-open, tongues clinched under teeth and no visual sign of external injuries was found. Vagina was found slightly open. The doctor performing autopsy found three abrasions over right cheek, deep pressure mark on the external side of the right eye, pressure mark over right cheek in the centre, abrasion over right nose, three abrasions near the above abrasions, contusion on the inner side of the right thigh, injury over head, contusion mark over occipital region, contusion over nose. On internal examination blood accumulation in the occipital region, reddishness over brain and brain marrow were found and

chambers of the heart were found empty, lungs were congested, undigested food particles and 250 ml water in the stomach, congestion in liver, spleen and kidney, redness over ilia majora and minora were found. All the above injuries were antemortem in nature and were caused by hard and blunt object within six hours from the time of death and the cause of death is asphyxia due to suffocation and time of death was within 12 to 24 hours from the postmortem. In the cross-examination he has stated that the injuries described by him has no co-relation with the death and the same could be caused by fall over hard and blunt surface or collision, all the injuries were simple in nature and the same could have been recovered within seven days. He has also opined that hymen of the deceased was not ruptured and the same was intact. The doctor has further stated that asphyxia can be caused by poisoning, by suffocation, by throttling or by hanging or by falling in water. He has also stated that he did not find any ligature mark over the neck and if throttling is done by hand, then possibility of mark of hand over the neck is there. He has stated that white froth coming out from the mouth and nose, can be caused by suffocation, putrefaction and in the instant case froth may be due to suffocation.

7. Learned counsel for the appellant submits that the girl was aged five years and she had fallen in a pit having 6 inch water and therefore the cause of death is also possible due to drowning particularly when the doctor has found no ligature mark over the neck of the deceased and he has found 250 ml of water in the stomach of the deceased and as such the cause of death could be accidental due to fall in the pit.

8. On the other hand, learned counsel for the State supports the impugned judgment of the trial Court and submits that as per inquest report of EX.P/4 only 6 inch water was found in the pit and therefore, there is no possibility of drowning.

9. We have heard learned counsel for the respective parties and perused the material available on record.



10. The evidence adduced by the prosecution for establishing the guilt of the accused may be summarized as under;

- (a) That on the date of incident at about 8.00 p.m. appellant came to the hotel of complainant Meena Bai and took her daughter baby Shakuntala on his back in the name of playing by inducing her towards the culvert.
- (b) That after half an hour when Shakuntala did not return she sent her son Suman to call her (Shakuntala) for meal. However, Suman came back and informed that Shakuntala is not there.
- (c) That immediately thereafter accused came to her hotel and on enquiry he said that he had left the girl near the culvert.
- (d) That the accused initially accompanied the complainant in searching the girl, however, accused went towards his truck thereafter.
- (e) That when the complainant could not trace her daughter Shakuntala in the locality (*mohalla*) she started weeping and thereafter accused was brought to the hotel from where he escaped at about 2.00-3.00 a.m. in the night.
- (f) That the complainant sent Babulal (P.W.4) and Bhuwan (P.W.3) to search the accused/appellant.
- (g) That Babulal and Bhuwan found the accused/appellant near Arjuni on road and took him to Bhatapara and thereafter from Bhatapara to Police Station- Baloda Bazar.
- (h) That on the memorandum of the accused/appellant that he has concealed the dead body of Shakuntala in the pit of the mines, the police discovered the same.
- (i) That on the examination of the dead body at the time of inquest vagina of the deceased was found slightly open, however, no external injuries were spotted.
- (j) That in the postmortem injuries as described in the foregoing paragraphs were found on the person of the

deceased and cause of death was asphyxia caused by suffocation.

11. The doctor performing autopsy, in paragraph -7 of his statement has opined that in the instant case asphyxia could be caused by poisoning, by suffocation, by smothering or closure of mouth and nostrils, by throttling, by hanging or even by falling in water. Since the doctor has not found any of the symptoms available in the case of hanging and strangulation as detailed in the medical jurisprudence by Dr. Modi, so possibility of death of deceased Shakuntala by hanging or strangulation is ruled out. The presence of froth in the nostrils, blood mixed froth in the lungs, presence of 250 ml fluid in the stomach are some of the symptoms which are available in the case of death due to drowning. Similarly, bruises and abrasions on the cheeks and molar region or on the lower jaw are found in the case of forcible smothering if there is struggle.

12. Learned trial Court on the basis of the statement of the complainant Meena Bai has arrived at the conclusion that the appellant took deceased Shakuntala on his back by inducement and thereby kidnapped her with an intention to commit rape as P.W. 4 Baburam had found the hymen of the deceased ruptured and P.W. 8 Bhojram Sahu has stated that vagina of Shakuntala was swollen and P.W. 12 Dr. Tiwari has also found reddishness over the exterior part of the vagina and redness over libia majora and minora and therefore, the learned trial Court held the appellant guilty under Section 363, 366-A and 376 of the IPC. Similarly, the appellant has also been held guilt for causing homicidal death of minor Shakuntala on the basis of circumstantial evidence of such as - i) that the appellant was last seen together with the deceased when she was alive; ii) that the appellant tried to run away from the place of incident on a false excuse and was subsequently apprehended; iii) that on the memorandum of the appellant dead body of Shakuntala was recovered from the pit which was very small having only 6 inch water and it was not possible for anyone to die after falling in the said pit; iv) that none of the witnesses have stated that the dead body was floating and the body was found muddled face down over the water. Therefore, it cannot be

said that Shakuntala after reaching there fell in the said pit and died due to drowning. Thus on the basis of these circumstances learned Court below has inferred that the appellant tried to commit rape on the deceased by forcing his penis into her vagina and when deceased Shakuntala might have tried to scream, the accused might have smothered her mouth, as a result of which she died due to suffocation and the abrasions present over various parts of her body may be because of writhing.

13. Learned counsel for the appellant submits that the question of kidnapping of the deceased does not arise as the complainant had herself stated that her daughter used to accompany the appellant on earlier occasions also and there is no evidence of rape available on record. The doctor performing autopsy has categorically stated that hymen of the deceased was not ruptured and the same was intact and reddishness present over libia majora and minora and over exterior part of vagina may be as a result of scratches, she might have sustained during drowning in the mud. It is further argued that the dead body of the deceased was not discovered on the basis of memorandum of the appellant as from the evidence available on record it would be evident that villagers had already recovered the dead body even before the memorandum of the appellant was recorded.

14. Meena Bai - mother of the deceased has stated that she runs a hotel in village Rawan where the accused came often. On the date of incident also appellant came there at about 8.00 p.m., took her daughter Shakuntal for playing as he used to take Shakuntala for playing earlier also. However, after half an hour she sent her son Suman to call her (Shakuntala) for taking meals but Suman returned and informed that the girl was not there. After return of her son Suman, accused came to her hotel and on being asked about the girl, he informed that he had left the girl near the hotel. The accused went up to the culvert to search her daughter under it and he has stated that if he does not find her, he shall inform. The complainant went towards village to search her daughter and the accused who had come with the truck for loading cement went towards his truck. She started weeping after return from locality (mohalla) as she could not locate her daughter and enquired from other villagers. One Janak Lodar brought the accused to the hotel who stayed in the

hotel throughout night and ran away at about 2.00-3.00 p.m. whereupon she sent Babulal (P.W.4) and Bhuwan (P.W.3) to search the accused who caught the accused and took to Baloda Bazar Police Station at about 6.00 a.m. in the following day. She lodged the report of Ex.P/1 in the police station and returned to the village -Rawan at about 10.00 a.m. and then people informed her that her daughter Shakuntala was lying in the pit. The accused has shown her salwar which her daughter was wearing on the date of incident. She has admitted that truckers stationed their trucks in front of her hotel and take tea and on the date of incident also some truck drivers, conductors, passersby and security guards had come to her hotel. On the same day the accused took tea in her hotel at about 5.00 p.m. and thereafter again returned on 7.30 p.m., at that time other customers were not present except herself and her kids. The accused stayed in her hotel for 20 minutes. The gate of the Modi Cement plant is far off which is approximately 1 furlong. He took her daughter on his back in the name of eating groundnut. The culver is just 15 ft (10 hands) away from her hotel and sound may be heard from the culvert in the hotel. There is continuous vehicular movement over the culvert. Half an hour after taking her daughter the accused came back in her hotel and said that he had left her daughter near culvert. Since the day the accused took her daughter she could not see her. She had family relations with the accused and therefore she never suspected him as he did not do any act which could create suspicion.

15. P.W. 2 Suman son of the complainant has stated that on the date of incident her mother Meena Kumari sent him to search Shakuntala, however, he could not locate his sister. Thereafter, his mother went to search Shakuntala but she could not find her also. On the following day Shakuntala was found lying dead in a pit. In the cross-examination he has stated that culvert is situated at a small distance from their hotel and whenever they find time they used to go and play there. The pit is on the right side of the canal which is far off from the road where my sister was found lying and the pit was filled with water. He has further stated that it is correct to say that the persons go there to answer the call of nature. He alone had gone to search her at about 8.00 p.m.

16. P.W. 3 Bhuwanlal Sahu has stated that complainant came to him and enquired about her daughter and informed that her daughter is missing. Thereafter, he also started searching the girl along with others. The accused Raju was also searching with them, however, in the meanwhile, accused Raju disappeared which created suspicion in the mind of Meena Kumari who asked him to go and report in Bhatapara and Baloda Bazar Police Station whereupon he and Babulal were proceeding to Bhatapara. However, on way near Arjune they saw the accused by the side of the road stopping their truck by waving his hand and after seeing them in the truck, the accused became apologetic whereupon they asked him to accompany them to Police Station-Bhatapara. After reaching police station they met one constable and informed him about the incident. However, only constable was there and S.O. was coming in the morning. They started for Baloda Bazar as Rawan comes within the jurisdiction of Baloda Bazar. No seizure was made in his presence. When they returned from Baloda Bazar police station to village Rawan they found that crowd was gathered and Shakuntala was lying there. Dead body of Shakuntala was lying in a muddy pit. In the corss-examination he has stated that the pit where the incident took place is 200 ft. away from the hotel of Meena Bai and there was only 6 inch water in the pit. He has further stated that he met Meena Bai in Baloda Bazar. In the night Meena Bai came to his house at about 11.00-11.30 p.m. and she was accompanied by 4-5 persons including the accused. He has further stated that he met Raju at about 5.00 a.m. beside the road. Report was lodged by Meena Bai in his presence.

17. P.W. 4 Baburam has stated that on the date of incident when he was returning after working he found big crowd near the culvert and his children were also there and they informed him that daughter of Ranjan is missing. He went near the culvert and found salwar of the deceased. The appellant was sitting near ber tree and on being asked he told that he brought Shakuntala up to the culvert and had left here there. After some time he was told that appellant had escaped on the excuse of urination and on search they could not locate him. However, they found the appellant near Arjuni while they were proceeding towards Bhatapara, took him to the Police Station- Bhatapara and from there they proceeded to Baloda Bazar Police Station by a truck. On

being asked by the police constable the appellant confessed in a hotel and stated that he has thrown the girl in a pit. Thereafter, they handed over the appellant to the police and took the appellant towards the place of incident. He reached with the police on the spot and found the dead body of baby Shakuntala which was lying under one and half feet deep water face down. He has further stated that after taking out the dead body from the pit, he cleaned the mud from her body and inspected her vagina and found the vagina torn. He stated that he did not find any blood. He has further stated that accused had shown the spot where the dead body was lying, the villagers were agitated and were ready to beat the appellant whereupon the police brought the appellant back to the police station. He has admitted his signature over Ex.P/4 – inquest report and Ex.P/5 – memorandum. However, he stated that accused did not tell before him that he will lead where he has concealed the dead body of the girl. He has also admitted his signature over Ex.P/6 and stated that salwar and underwear of the girl were seized through this document. In the cross-examination he stated that police has not recorded his statement and stated that number of persons were sitting over the culvert who were residents of village Pounsari and had reached there for taking wine in the nearby liquor shop. He has further stated that thousands of persons had gathered at the place of incident and they were in agitated mood. Police force was deployed and they were threatening that they would beat the accused whereupon Police took the accused to the police station. PW-8 Bhojram Sahu has also deposed in the similar line. He is the witness of inquest, memo of Ex P-5 and seizure of underwear of the accused of Ex P-6. In the cross examination he has stated that police interrogated the appellant in the police station in the morning in the presence of Meenabai, Bhuwan, Baburam and Shera and himself. The appellant was further interrogated near canal when he mentioned about the spot. During interrogation in police station also he had narrated the incident and also disclosed about the spot. However, his statement was recorded near the place where the dead body was lying. Thereafter, police took the accused inside Modi Cement Plant.

18. So far as the circumstance of the deceased when she was alive being last seen in the company of the accused is concerned, from the statement of

PW-1 Meenabai it is evident that appellant took Shakuntala on his back in the name of playing by inducement of providing groundnut and thereafter the dead body of Shakuntala was found beside the canal in a pit. Immediately after the appellant took the deceased with him, intensive search of Shakuntala was made in the vicinity and at all the places where she could be found and her dead body was ultimately found in the morning. Meena Bai has also stated in paragraph 13 of her statement that since the accused took the girl she did not see her daughter. Thus from the perusal of the evidence of Meenabai circumstance of the deceased being last seen with the accused when she was alive is established.

19. The second circumstance required to be established by the prosecution is the conduct of the accused after the incident.

20. Learned counsel for the appellant submits that just half an hour after the incident the accused came to the hotel of Meenabai and had participated in the search of the girl as is evident from the statement of Meenabai, Bhuwanlal, Baburam and Bhojram. From the statement of PW-2 Suman it is evident that they used to play near the culvert. However, when the villagers could not be able to trace the girl, they started suspecting the appellant as a result of which they got agitated and were prepared to beat the him which compelled the appellant to leave the place for his own safety in the late night and therefore on the basis of this conduct of the accused no adverse inference could be drawn against him. Meenabai has stated in her evidence that initially the appellant went with her to search the girl upto the culvert, however, when she proceeded towards village, the appellant went towards his truck and from where Janak Loader brought him after catching hold of him but he again fled from the hotel at about 2-3.00 a.m in the night and Baburam and Bhuwan brought him to Baloda Bazar Police Station at about 6 a.m. This statement of complainant Meenabai is duly corroborated by PW-3 Bhuwan who has stated that while the appellant was searching along with them in the night, the appellant escaped. On suspicion Meenabai asked him to go to Bhatapara and Baloda Bazar to inform the police. However, they apprehended the accused near Arjuni while he was stopping the truck and took him to Bhatapara police station and from there they brought him back to Baloda Bazar

police station. Similar is the statement of PW-4 Baburam who accompanied Bhuwan and found accused near Arjuni and brought him back to police station Baloda Bazar.

21. So far as the submission of the counsel for the appellant that the appellant escaped in the night for his own safety as the persons were agitated and were bent upon beating him is concerned, from the evidence of PW-3 and PW-4 it appears that the people got excited only in the morning when they gathered in thousands and they saw the accused with the police on the spot. When the accused saw the witnesses Bhuwan and Babulal in the truck he started praying for mercy with folded hand, therefore, escaping of the appellant from the spot without taking his truck is a circumstance which makes the conduct of the accused suspicious. The third circumstance relied upon by the prosecution to establish the guilt of the accused is that the dead body of the deceased was found on the basis of his memorandum. Learned counsel for the appellant submits that from the perusal of the statement of PW-1 Meenabai, PW-3 Bhuwanlal and PW-4 Baburam it is evident that dead body of Shakuntala was not discovered on the basis of information given by the appellant but the body was already found by the villagers and therefore, the Court below has committed an illegality by arriving at the conclusion that the dead body of the deceased was found on the memorandum of the appellant and the same is based on misreading of the evidence available on record. Meenabai in paragraph 3 of her statement has stated that when she reached village Rawan at about 10 a.m. people informed her that the dead body of her daughter was lying in a pit. PW-3 Bhuwan in paragraph 4 has stated that when he returned from Rawan P.S.-Baloda Bazar, he found that the crowd was gathered there and dead body of Shakuntala was lying. P.W. 4 Baburam has stated that on interrogation in the hotel by the police, the accused stated that he has thrown the dead body in a pit beside the canal and when he returned to the spot with the police he found the dead body which was recognized by him as the dead body of baby Shakuntala. P.W. 8 Bhojram in paragraph 7 of his statement has stated that on interrogation by the police before him the memorandum of Ex.P/5 was prepared and the appellant gave information that he has taken the body of the girl and placed it in the water accumulated in the

pit and the accused led the police to the place of incident and got the dead body recovered. PW-10 Suresh Chandra Goswami TI of Baloda Bazar Police Station has stated that after recording FIR of Ex P-1 on 5.12.1995 he recorded the memorandum of the accused in the presence of Bhojram and Baburam stating that he had concealed the dead body in a pit filled with water near canal and led him to the place and got the same discovered.

22. It is true that there is sufficient evidence on record which shows that the dead body of Shakuntala was discovered by the villagers even before police reached the place, however, from the statement of the Investigating Officer PW-10 which is duly corroborated by the statement of PW-8 Bhojram, the attesting witness of the memorandum, it is established that on interrogation the accused stated that he had concealed the dead body in a pit filled with water and on the basis of this information police reached the spot, found the dead body lying in the place disclosed by the appellant. Therefore, from the evidence of the above two witnesses it can be safely held that the accused gave information to the Police under section 27 of the Evidence Act regarding concealment of the dead body in a pit which was subsequently discovered/found in the pit at the instance of the appellant.

23. Now the last question arising for consideration is whether the prosecution has been able to establish that the death of Shakuntala was homicidal. In the foregoing paragraphs after discussing in detail the post mortem and the physical condition of the body of the deceased as observed during preparation of the inquest report we have observed that the doctor performing autopsy has found some injuries/ reddishness over exterior part of vagina, libia majora and minora and the witnesses of the inquest have stated that the vagina of the prosecutrix was partly open. However, the doctor has further opined that hymen of the deceased was intact and it was not ruptured. The doctor has stated that the deceased died of asphyxia. However, asphyxia could be caused for any of the reasons enumerated in the post mortem report and paragraph 7 of statement of the doctor. Absence of ligature mark over the neck and absence of mark of fingers rules out the possibility of death due to strangulation and hanging. In the totality of the circumstances on the basis of

the autopsy report we have observed in the foregoing paragraphs that the symptoms of death due to drowning are present in the instant case. Presence of bruises and abrasions over cheek and molar region or lower jaw is suggestive of forcible smothering. If a child aged five years is taken to the source of water and its mouth and nostrils are pressed inside the water, in such a case symptoms of death due to forcible smothering and drowning may be available as is present in the instant case. Arguments advanced by the counsel for the appellant that PW-2 Suman has stated that the place where dead body of Shakuntala was found is a place where people usually go to ease themselves and therefore the possibility that after easing herself she might have gone for wash to the pit and have fallen accidentally in the said pit and she might have died as a result of drowning is highly improbable inasmuch as the incident is said to have taken place after 8 p.m. during winter days. She was left by the accused near the culvert which is adjacent to the hotel and therefore, it is highly improbable that a child aged 5 years would go to a place for wash after easing herself which is one thousand ft. away from the culvert as mentioned in the spot map of Ex. P-8.

24. Thus on the basis of aforesaid discussion we are of the considered opinion that the cumulative effect of the circumstances relied upon by the prosecution unerringly points towards the guilt of the accused and it is established that the appellant took the deceased after inducing her, tried to sexually assault her and thereafter murdered her.

25. In view of the foregoing, we do not find any illegality or infirmity in the impugned judgment of trial Court. There is no substance in this appeal and the same deserves to be dismissed and is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge